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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/536,345	03/25/2000	Richard Polevoy	2340-1-008	3087
23565	7590	12/31/2003	EXAMINER	
KLAUBER & JACKSON 411 HACKENSACK AVENUE HACKENSACK, NJ 07601			HO, THOMAS Y	
			ART UNIT	PAPER NUMBER

3677

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/536,345

Applicant(s)

POLEVOY ET AL.

Examiner

Thomas Y Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-19,21 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4,5 and 25 is/are allowed.
- 6) ☒ Claim(s) 6,8-11,13-18,24 and 26-30 is/are rejected.
- 7) ☒ Claim(s) 7,12,19,21,23 and 31-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 8-11, 13-16, 18, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Nowell US4646371.

As to claim 6, Nowell discloses, a protective shield to enclose and contain sharp edges of a bed frame member 12,14 adapted to support a box spring and a mattress, said protective shield comprising first 24 and second 130 molded plastic housings each of said first and second molded plastic housings being molded in a predetermined configuration and having stiffening members (the various walls shown in the cross-sectional view of 24 in Figure 5 are all stiffening members, while the portion 136 on 130 is a stiffening member) to maintain the first and second molded plastic housings in said predetermined configurations, said first and second housings being joined together and having free ends (the end walls of 78 and 130 in Figures 6-7 are free ends), said first and second housings having a securing means (the securing means are where 140 meets 78; col.7, ln.40-45) at said free ends thereof, said housings adapted to be affixed about said sharp edges 30,32 of a bed frame to enclose and contain the sharp edges.

As to claim 8, Nowell discloses, wherein said shield 24,130 is adapted to be affixed to a bed frame member 12,14 when said free ends (where 140 meets 78) are affixed together.

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As to claim 9, Nowell discloses, wherein a said shield 24,130 is adapted to be affixed to a leg assembly (because not “leg assembly” structure is disclosed, one of the four members 12, 12, 14, or 14 can be a leg assembly).

As to claim 10, Nowell discloses, wherein said shield 24,130 is adapted to be affixed to at least one side rail (one of the four members 12, 12, 14, or 14 can be a side rail).

As to claim 11, Nowell discloses, a protective shield 24,130 to enclose and contain a sharp edge or corner 30,32 at at least one location about a bed frame adapted to support a box spring and mattress, said bed frame comprising horizontal side rails 12,12 having ends 16,20 (see Figure 1), horizontal cross members 14,14 joined to said horizontal side rails and having legs 74,76 extending vertically downwardly from the junction of said horizontal cross members and said horizontal side rails, and brackets 66 adapted to affix a headboard to said bed frame (the limitations “to enclose and contain...to affix a headboard to said bed frame” does not disclose any structural elements of the claimed protective shield to which the claim is directed; these limitations are merely intended use and so hold little patentable weight), said protective shield comprising first 24 and second 130 molded plastic housings, said first and second housings joined together and having free ends (end walls of 78 and 130 are free ends), said first and second housings having an interlocking securing means (where 130 contacts 78 is an interlocking securing means because these portions contact one another; col.7, ln.40-45; furthermore, the definition of “interlocking” does not inherently claim anything besides contact, as evidenced by the dictionary.com definition of the word interlocking, which is to unite or join closely) at said free ends thereof, said housings adapted to be affixed about said at least one

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location of said bed frame to enclose and contain the sharp edges 30,32 or corners by joining the interlocking securing means at said free ends of said first and second housings.

As to claim 13, Nowell discloses, wherein said housings 24,130 are adapted to be affixed about a location enclosing and containing legs 132 of a bed frame member.

As to claim 14, Nowell discloses, wherein said housings are adapted to be affixed about a location enclosing and containing junctions of a cross member 14 and a side rail 12 of a bed frame.

As to claim 15, Nowell discloses, wherein said housings 24,130 are adapted to be affixed about a location enclosing side rails 12 of a bed frame.

As to claim 16, Nowell discloses, wherein said housings 24,130 are adapted to be affixed about a location enclosing ends 16,20 (see Figure 1) of side rails 12, junctions of cross members 14 and side rails, legs 132, brackets 66 for affixing a headboard and side rails 12 of a bed frame.

As to claim 18, Nowell discloses, in a bed frame construction having horizontal side rails 12 and horizontal cross members 14 affixed to said horizontal side rails and positioned between said horizontal side rails, and leg assemblies 74,76 located adjacent said junctures of said horizontal side rails and said horizontal cross members (this is a Jepson type claim, and the limitations “in a bed frame...said horizontal cross members” are admitted prior art, and are given little patentable weight; the weight of the claim begins with the phrase “the improvement...”), the improvement comprising a protective shield 24,130 comprising a plurality of molded plastic housings, said housings being joined together and having free ends (the free ends are the end portions of 78 and 130 that make contact) including interlocking means (the abutting surfaces between 78 and 130 is an interlocking means; the definition of “interlocking” does not inherently

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claim anything besides contact, as evidenced by the dictionary.com definition of the word interlocking, which is to unite or join closely) to affix said free ends together, said housings being affixed to said bed frame to enclose said ends of said horizontal side rails, said junctures of said horizontal side rails and said horizontal cross members by affixing said free ends together by said interlocking means.

As to claim 24, Nowell discloses, said shield 78,130 has indicia 44 permanently placed on said shield. The indicia can be any portion of 24, and does not have to be a letter, number, or picture.

Claims 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Cartwright US5890244.

As to claim 26, Cartwright discloses, a protective shield to enclose and contain a sharp edge or corner of a structural or ornamental member R, said protective shield comprising first and second molded plastic housings (each half of 10 is a molded plastic housing because vinyl is plastic; col.2, ln.60-65; see Figure 8), each of said first and second molded plastic housings being molded in a predetermined configuration and having stiffening members 40 to maintain the first and second molded plastic housings in said predetermined configurations, said first and second housings joined together and having free ends, said first and second housings having an interlocking securing means 32,34 at said free ends thereof, said housings adapted to be affixed about said sharp edge or corner of a structural or ornamental member to enclose and contain a sharp edge or corner by joining the interlocking securing means at said free ends of said first and second housings.

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As to claim 27, Cartwright discloses, wherein said first and second housings are joined together by means of a hinge 19.

As to claim 28, Cartwright discloses, wherein said hinge is a living hinge 19.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cartwright US5890244 in view of Dees US5950260.

As to claim 17, Cartwright discloses, a method of protecting locations R of a bed frame (portion holding B) having sharp edges and adapted to support a box spring and mattress B, said method comprising: providing a pair of molded plastic housings (each half of 10 is a molded plastic housing) having a predetermined thickness and flexibility, said molded plastic housings being joined together to establish a junction 19 of greater flexibility and having free ends, positioning the housings so as to enclose the sharp edges R of the bed frame within the molded plastic housings, closing the molded plastic housings together to enclose and contain the sharp edges, and attaching the free ends together to retain the molded plastic housings to the bed frame. The difference between the claim and Dees is the claim recites an area of narrower thickness. Cartwright discloses a fold line, but does not disclose any narrowing of thickness. Dees discloses a cushion similar to that of Cartwright. In addition, Dees further teaches to provide living hinge fold lines to permit folding the pad as is well known in the art (col.4, ln.1-11). It

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would have been obvious to one of ordinary skill in the art, having the disclosures of Cartwright and Dees before him at the time the invention was made, to modify the fold line of Cartwright to be a living hinge, as taught by Dees, to obtain a junction having narrower thickness. One would have been motivated to make such a combination because the ability to permit folding of the pad in a manner old and well known in the art would have been obtained, as taught by Dees (col.4, ln.1-11).

Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cartwright US5890244 in view of Lupo US4878259, and further in view of cited case law.

As to claim 29, the difference between the claim and Cartwright is the claim recites, wherein said interlocking securing means comprises a tab on one of said first and second housings and an aperture on the other of said first and second housings and said tab interlocks into said aperture to join said free ends of said first and second housings together. The VELCRO® means on Cartwright is known to be hook/tab that passes through a loop/aperture, but this is not clearly shown. Lupo discloses a bed frame cushion similar to that of Cartwright. In addition, Lupo further teaches that interlocking means can be VELCRO® or male/female snaps. It would have been obvious to one of ordinary skill in the art, having the disclosures of Cartwright and Lupo before him at the time the invention was made, to replace the VELCRO® in Cartwright with male/female snaps, as in Lupo, to obtain a tab (male) that fits in an aperture (female) to join the housings together. One would have been motivated to make such a combination because the fastening means are equivalent (col.3, ln.35-40; col.4, ln.1-10), inasmuch as the references disclose these elements as art recognized equivalents, it would have

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been obvious to one of ordinary skill in the exercise art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).

As to claim 30, Lupo teaches, wherein said interlocking securing means comprises interlocking edges on said free ends of said first and second housings adapted to be snapped together (col.3, ln.35-40; col.4, ln.1-10) to join said free ends of said first and second housings together.

Allowable Subject Matter

Claims 1-2, 4-5, and 25 are allowed.

Claims 7, 12, 19, 21, 23, and 31-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As to claims 1 and 4-5, the prior art of record fails to disclose or suggest a bed frame having the claimed combination of elements while also having horizontal cross members affixed at junction points to horizontal side rails intermediate said ends. Nowell discloses side rails and cross members, but does not disclose that either is affixed to the other, and shows a separation between the rails and cross members. Claims 2 and 25 depend from claim 1.

As to claims 31-33, the prior art of record fails to disclose or suggest a protective shield having the claimed combination of elements, while also having the first and second housings joined together by a hinge. Nowell discloses that the housings are separable and slidably coupled without a hinge. Claims 7, 12, and 21 depend from claims 31-33.

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As to claim 19, the prior art of record fails to disclose or suggest a bed frame construction having the combination of claimed elements, while also having the housings adapted to enclose substantially the entire length of the side rails. Nowell discloses the shields only on the corners/ends.

As to claim 23, the prior art of record fails to disclose or suggest a bed frame construction having the combination of claimed elements, while also having snap-fit interlocking edges. Nowell discloses that the housings are in abutment, but does not disclose snap-fit interlocking edges, or any reason for such a modification.

Response to Arguments

Applicant's arguments with respect to claims 1-2, 4-19, 21, and 23-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y Ho whose telephone number is (703)305-4556. The examiner can normally be reached on M-F 10:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J Swann can be reached on (703)306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-1113.

TYH


ROBERT J. SANDY
PRIMARY EXAMINER